IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

RSA.No.39/1996

Date of Decision :13.6.2007.

Raj Pal Chauhan. …Appellant.

Versus:

State of H.P. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: Mr.D.N.Ronta, Advocate.

For Respondent. Mr.J.K.Verma, Dy.Advocate General.

Sanjay Karol, J (Oral).

This second appeal is directed against the judgment and decree dated 19th September, 1995 passed by learned District Judge, Shimla whereby the judgment and decree of Senior Sub Judge, Shimla dated 1.1.1993 dismissing the suit of the plaintiff, was reversed. For the purpose of convenience, the appellant hereinafter referred to as the 'plaintiff' and the respondent as 'defendant.'

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Plaintiff filed a suit for recovery of Rs.1,60,630.42 against the defendant by way of damages in the Court of Senior Sub Judge, Shimla, inter alia, contending that the plaintiff through a will became owner in possession of land comprising in Khasra No. 232/159 measuring 34-11 bighas situated in Chak Kalamoo, Tehsil Kotkhai, District Shimla. During the month of August and September, 1988, due to heavy rain, the retaining wall of the road constructed by the defendant immediately above the land of the plaintiff where he had planted orchard came down due to land sliding and the fruit plants of the plaintiff were damaged. The defendant got the damage report prepared through revenue official/agency as the damage was caused due to the various acts of omission and commission of the Public Works Department of the defendant. The damage to the fruit plants was got assessed through Horticulture Department of the defendant and the damage was assessed on the basis of 'Harbans Singh Formula, 1966' based on the price prevalent for the year 1966. In terms of the damage report, the damage caused to the fruit plants was assessed to the tune of Rs. 38,107.50 paise. According to the plaintiff since there has been increase of 402 percent in the price index between the year 1966 till 1988 as per the Consumer Price Index, accordingly the damage caused to the fruit plants ought to have been assessed at Rs.1,53,190/- instead of Rs.38,107.50 paise. The plaintiff has claimed an interest of Rs.44,527.22 paise at the rate of 12% per annum. According to him, the defendant has

paid a sum of Rs.38,107.50 paise. Therefore, he is entitled for the balance suit amount.

In the written statement filed by the defendant, the stand taken is that due to unprecedented and heavy rain fall in the month of August and September, 1988, the pucca retaining wall had given way and debris had caused partial damage to the fruit trees. However, it is stated that keeping in view the Harbans Singh formula, adequate compensation was awarded to the plaintiff by the defendant. The damage occurred due to an act of God and natural calamities and was beyond the control of Public Works Department. According to the defendant, the damages were assessed by the Horticulture Department and accepted by the plaintiff without protest. The fact that the damage was assessed on the basis of 'Harbans Singh Formula' is admitted. With regard to the applicability of the Price Index for the year 1966, it is stated that the same has not been considered in the assessment as it does not cover the Horticulture Industry.

From the pleadings of the parties, the court below framed the following issues:

"1. Whether the plaintiff is entitled to the amount of damages, if so, to what extent?.
…OPP.
2. Whether the plaintiff is entitled to interest from the date of institution of the suit, if so, at what rate?.
…OPP.
3. Whether the suit is not maintainable as alleged?.
…OPD.
4. Whether the plaintiff has no locus standi to file the present suit? …OPD.
5. Whether the plaintiff is estopped from filing the present suit?.
…OPD.

6. Whether the suit is bad for non-joinder of necessary parties as alleged?.
…OPD.

7. Whether the Civil court has no jurisdiction to try the suit as alleged?.
…OPD.

8. Whether there is no cause of action to have filed the present suit?
…OPD.

9. Whether notice under Section 80 C.P.C. was issued before filing of the suit as alleged?.
…OPP.

10. Relief.

The learned Senior Sub Judge decreed the suit filed by the plaintiff on 1.1.1993 to the extent of Rs.1,04,795.62 paise holding that the benefit of Consumer Price Index as applicable to the State of H.P. is to be given to the plaintiff which according to him was 3.75 per cent. The interest at the rate of 6% per annum from the date of filing of the suit till the amount is realized was also awarded.

Against the said decree, an appeal was preferred before the District Judge, Shimla being C.A.No.72-S/13 of 1995/93 titled as State of H.P. Vs. Raj Pal Chauhan which framed the following point for determination:

1. Whether the plaintiff is entitled to the amount of damages along with the interest as claimed in the plaint, if so its effect?.

The First Appellate Court set aside the judgment and decree passed by the trial Judge primarily on ground that the

damage caused was due to an act of God and consequently the plaintiff was not entitled for any damage at all. He has, however, not touched the aspect of the assessment of damage being carried out in accordance with 'Harbans Singh Formula' as also the applicability of the Consumer Price Index.

I have heard learned counsel for the parties.

The plaintiff examined five witnesses including himself and the defendant produced one witness. During the trial, eight documents were produced and accepted as under:

"Ext.P-1	Damage Report.
Ext.P-2	Assessment report dated 29.5.1989 carried out by the Horticulture Department.
Ext.P-3	Consumer Price Index issued by the Labour Bureau, Shimla
Ext.P-5/A	Mutation reflecting the ownership of the plaintiff.
Ext.P-5/B	Legal Notice dated 7.10.1990.
Ext.P-5/C	Postal Receipt
Ext.P-5/D	Acknowledgement of the said notice.
Ext.P-5/E	Jamabandi for the year 1989-90."

Shri Parkash Chand (PW-1), Junior Engineer of the defendant has stated on oath that the claim with regard to the damage caused to the trees being 38 apple plants, 11 Almonds, 11 pears were got carried out and the valuation was done by the Horticulture Department. He has approved the damage report as also the assessment report being Exts. P-1 and P-2 respectively.

Shri Mange Ram (PW-3), Assistant Development Officer, Horticulture Department of the defendant on examination has stated that he has prepared the assessment report being Ext.P-2 based on the 'Harbans Singh Formula, 1966'. He has further clarified that there is no other formula in assessing the damage caused to the fruit trees. The said formula is still applicable and is based on the price as prevalent in the year 1966. According to him, there has been no revision of the same.

Shri M.P.Kanaujia (PW-4) Assistant. Director, Labour Bureau, Govt. of India has stated that with regard to the State of H.P., there has been an increase of 402 per cent of the price index between the year 1966 and 1988. He has accepted the price index (Ext.P-3).

Shri Mohinder Singh (DW-1), Assistant Engineer on examination has stated that in the year 1988 there were unprecedented rains due to which the retaining wall gave way resulting into damage of the trees belonging to the plaintiff and the damage was assessed by the Horticulture Department which was duly paid to him. According to him, no further amount is due and liable to be paid. He has, however, denied the suggestion put to him that the retaining wall was 'Kachhi' and there was lot of debris lying on it.

The fact that the damage has been caused to the plants of the plaintiff is not disputed and in fact it is admitted and the defendant has got the damage report prepared. The controversy, therefore, is narrowed down as to whether the plaintiff

is entitled for enhanced amount of compensation as claimed in the suit or not.

The fact that the loss and damage has been assessed on the basis of 'Harbans Singh Formula' is admitted case of the parties. Nothing has come on record to support the contentions of the defendant that the compensation awarded and paid to the plaintiff is without any entitlement. There is neither any statement nor any document on record to even suggest the same except the pleadings, but there is no evidence to the said effect. If no damage was caused to the plaintiff attributable to the defendant, then why was the assessment of compensation and valuation of the fruit trees get done and the amount of compensation paid to the plaintiff. There is no documentary evidence to support that the same was accepted under protest.

This Court in Civil Suit No.98/1988 titled as Vijyoti Devi Vs. State of H.P, in some what similar circumstances, has acknowledged the applicability of the Consumer Price Index as maintained by the Labour Bureau, Shimla for assessing the damage to the fruit bearing trees carried out by the defendant in accordance with the 'Harbans Singh Formula' This Court has noticed that the 'Harbans Singh Formula' stands duly approved by the Director of Agriculture, Punjab and Himachal Pradesh. for the purpose of assessment of market value of the fruit trees.

This Court in ***Union of India and others Vs. Khazana Ram and others*** 1998 (1) Sim.L.C. 479 have held as under:

"Since both the parties are not disputing that the basis for determining the compensation is Harbans Singh Formula, the controversy is narrowed down that how much increase should be allowed over the assessment of compensation made by the Department (Annexure PB to the writ petition and Ext.RW-1/A on the file of the District Judge) keeping in view the rise in prices from the year when the said formula was prepared and adopted. This formula is contained in Article 'The Evaluation of Fruit Trees, Basic Principles and Method' written by Shri Harbans Singh, the then Director of Horticulture, Himachal Pradesh, which was duly approved by the Directors of Agriculture, Punjab and Himachal Pradesh for the purpose of assessment of market value of fruit trees. In judgment dated 9.7.1997 passed in Civil Suit No.98 of 1998 titled Smt. Vijoti Devi (since deceased) through her legal representative Raj Pal Chauhan V. The State of Himachal Pradesh, the learned Single Judge of this Court has accepted this formula for determining the market value of the fruit trees. In the said judgment, it has been taken note of that this formula was published in the year 1966 since when there has been substantial increased in the Price Index 331% or three-fold increase has been given for assessing the market value of fruit trees in the year 1986. Similarly, in Ranjit Singh V. The Union Territory, Chandigarh, 1983 Revenue Law Reporter (P&H) 451 the Harbans Singh formula was applied for determining the market value of the fruit trees and premium was given for increase in Price Index from the year 1966 till the year of assessment of compensation."

I am in agreement with the learned counsel for the plaintiff that the First Appellate Court completely mis-directed itself in coming to its conclusion. There was no issue, before the Court below, to the effect that the damage caused was due to an act of God or negligence of the defendant. In fact, as already mentioned, the defendant accepted the loss of the plaintiff being genuine, therefore, got the damage assessed and evaluated the same. No explanation whatsoever is on record to suggest as to why the matter with regard to assessment of damage to the plants was referred to the Horticulture Department. If no damage was caused due to the negligence of the defendant, then why was the matter referred to the same. This Court in *Vijyoti's* case (supra) has further held as under:

> "It has come in the evidence of PW 5 that the assessment of damage was done on the basis of Harbans formula. This formula is contained in a publication by S. Harbans Singh, formerly Director of Horticulture, Himachal Pradesh dealing with basic principles and methods of evaluation of fruit trees. This publication was published in the year 1966.
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> It deserves to be noticed that this Harbans Singh Formula stands duly approved by the Directors of Agriculture, Punjab and Himachal Pradesh for the purpose of assessment of market value of the fruit trees (See: Ranjit Singh V. The Union Territory, Chandigarh (1983 Rev.L.R.451).
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> The learned counsel for the plaintiff has contended that this formula was published and based on the market conditions as prevalent in the year 1966 and, as such, the plaintiff is entitled to claim a substantial increase in the price of the fruit trees during

the period 1966 to 1986-87. It was pointed out that as per consumer price index in respect of Himachal Pradesh prepared by the Government of India, (Ministry of Labour), Labour Bureau, Shimla, Ex. P11, the price index in the year 1966 was 111 and the same had risen to 478 in the year 1986. In other words, there has been an increase of 331%. Putting it roughly, there has been three fold increase in the price index. The learned counsel for the plaintiff has, therefore, contended that considering such three fold increase in the price index, the damage assessed vide Ext. PW 5/A to PW 5/C is also required to be increased accordingly. Calculating on such basis, the plaintiff would be entitled to damages as under:

(a) In respect of plants in the land
Detailed at serial Nos.(1) and (2) above,
Rs.11,368.24 paise x 3 Rs.34,104.72
.

(b) In respect of plants in the land
Detailed at serial Nos. (3) and (4) above
Rs.1,29,587.50 paise x 3 Rs.3 ,88,762.50

Rs.4,22,867.22 p

The learned Assistant Advocate General appearing for the defendant, has not been able to challenge the correctness of the price index as reflected in Ext.P11 and the increase in such price index during the period 1966 to 1986 from 111 to 478, that is, an increase of 331%. In fact PW 2, Supervising Officer, Labour Bureau, Shimla, who proved Ext. P11 in evidence, was never cross examined by the defendant in order to show that the price index indicated in Ex. P11 was not correct. It was, however, contended that the price index reflected by Ex.P11. could no be taken note of for assessing and

> determining the increase in the price during the period 1966 to 1986 since it is difficult to determine the increase during the period with precision.
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> In Ranjit Singh V. The Union Territory, Chandigarh (supra), the High Court of Punjab and Haryana while determining the market value of the fruit trees under the provisions of Land Acquisition Act, 1894 by placing reliance on the whole sale price index published by Economic Advisor, Ministry of Industry and Civil Supplies, Government of India, allowed the increase in the price of fruit trees for the period 1966 to 1975 over the assessment of market value made on the basis of Harbans Singh formula.
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> Similar increase was allowed by the High Court of Punjab and Haryana Gokal Chand alias Gokal Singh and another V. state of Punjab (1989 (3) LACC 487)."

Relying upon the material on record as also the ratio of law laid down by this Court , I am of the opinion that the plaintiff is entitled to increased amount of damages in terms of Exts. P-1 and P-2 and as assessed by the trial Court. While assessing the same, the trial Court has recorded as under:

> "Plaintiff is certainly entitled to the compensation at enhanced rate on account of rise in price index and he would be therefore, entitled to the amount which comes after multiplying the compensation of Rs.38,107.50 paid to him by 3.75 (HP) rise in Consumer Price Index as disclosed by PW.3. No doubt, this Consumer Price Index is for Industrial workers, but it would also apply to Agricultural Sector as well, as it is agricultural Sector which also contributes the rise in the Consumer Price Index

whether for industrial workers or for a common man. Accordingly, the plaintiff is held entitled to an amount of Rs.1,04,795.62 p excluding the amount of compensation paid to him."

The questions of law are answered accordingly. Appeal is allowed and the plaintiff is accordingly entitled for the said amount. Consequently, the judgment and decree dated 19.9.1995 passed by District Judge, Shimla is set aside and that of the Civil Judge (Sr. Division)- cum-CJM, Shimla is restored.

(Sanjay Karol),
Judge.

June 13, 2007(R)